No. 20617

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

J. HOWARD ARNOLD — APPELLANT

vs.

WILLIAM J. McGUINESS — APPELLEE

APPELLANT'S CLOSING BRIEF

Appeal from the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

J. HOWARD ARNOLD
Postoffice Box 919
Berkeley 1, Calif.
Telephone LA 4-8473
APPELLANT, pro se

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FACTUAL BACKGROUND

der the heading 'FACTS OF THE CASE' and throughout Appellee's ief, a number of non-facts and semi-facts are presented in a way ding to disparage Appellant's effort to maintain the integrity of his me and to compel the Superior Court in Alameda County to admin- er justice according to law. A factual reorientation is needed.

Appellant has appeared in his own behalf throughout this gation by order of the Superior Court which, in defiance of Calif- nia and Federal law, forced him to trial pro se in the divorce ion while permitting his wife to pay counsel from community funds. pellant's wife is mentally ill from medically untreated menopause addiction to psychotoxic amphetamine 'pep-pills', and incompetent sue. She is not a 'former wife' (p.3, lines 1, 21), holding only a udulent and void Final Decree purporting to vest title to commun- real property in her for her attorney's financial benefit, which gment the Superior Court and appellate courts refuse to vacate.

Appellant has never claimed that "at the moment he files is petition for the Creditors' Arrangement the Superior Court was tomatically' divested of all jurisdiction" (Appellee's Brief, p. 2, n 21), but only that it would have been thus divested of jurisdic- lo in rem over community property -- which it never held -- by nterposition of the paramount Federal court jurisdiction conferred by he Bankruptcy Act. This Court, while following the District Court of ppeal decision affirming Judge Bostick's jurisdiction in rem to evict ppellant from his debtor's estate or a quasi in rem order, twice as refused to decide the weightier jurisdictional question of Superior Court jurisdiction in rem for transferring title to a debtor's estate. Appellant does not question Superior Court jurisdiction in personam

the divorce action proper because of the Federal proceeding.

Appellant did not "refuse to leave the family dwelling" (p.3, e 4), but for reasons of illness and lack of funds was unable to ve out, and by Federal law was legally incapable of surrending a tor's estate except on order of the U.S. District Court. His wife s not "compelled to seek redress" (p.3, line 22) for any "refusal obey" Superior Court orders, "assuming that the Appellant refus- to pay the child support and/or alimony" (p. 12, line 25). Appellant never refused to obey a valid order of court. All four contempt ions were brought as abuse of process, to compel him to end his ense and give up his debtor's estate.

The contempt action from which this damage suit arises an with invalid service of process on July 15, 1964, on which dat curred the hearing on Appellant's motion to vacate the void Fina ree of divorce. The contempt proceeding beginning Oct. 8, 1965, a triggered by filing of Appellant's Opening Brief in his second peal to this Court over confirmation of the Creditors' Arrangement, Sept. 24, 1965. In neither instance was any money owing to Mrs. rold; the purpose of the contempt proceedings was aggressive and untive, not to compel obedience to prior orders but to quiet title nd prevent further litigation. As noted in the Complaint (Paragraph V; Clerk's Transcript, p. 2), a conspiracy involving Appellee exists nd utilizes void judgments and contempt orders to defeat justice for e mercenary advantage of Appellant's wife and her attorney and the fruding of Appellant and his creditors.

It is an open secret, of which this Court should take jud- ia notice, that divorce-court judges commonly misuse their powers ward and enforce unmerited divorces for the purpose of enrichi

divorce lawyers generally, especially in cases involving substantial community assets. The injustice of the situation is a national scandal, especially in California and most especially in Alameda County. The unprecedented decisions in Arnold v. Arnold and their (unpublished) affirmance on appeal constitute an incredible perversion of judicial power, redress for some of which is sought herein.

SUMMARY OF ARGUMENT

A contempt proceeding is separate from the divorce action, and must be begun by service of process anew. Appellate affirmation of jurisdiction in rem over community property is irrelevant. A Motion to Quash service of an order to show cause is proper at defendant's option, to test the court's jurisdiction of his person separately from the main contempt hearing. Where the affidavit fails to allege and provide factual support for each necessary element of a contempt, the court's jurisdiction of the subject-matter is not invoked, but is clearly and entirely absent for the particular case. Issuance of an Order to Show Cause based on such defective affidavit is a void (not erroneous) act for which judicial immunity is absent, the defect in the affidavit precluding a valid exercise of judicial discretion. Only by actually having jurisdiction, not merely presuming that he has it, can a judge avoid liability from damages for his judicial acts. For his illegal ministerial acts, such as commitment of Appellant to jail, he enjoys no immunity. Superior Court jurisdiction of the subject-matter and of the person was never established in the particular case and all of Appellee's judicial acts therein were wholly void, not erroneous, all jurisdiction being clearly absent because of Appellee's disregard of the affidavit's defect and of the quashing statute.

ARGUMENT

I

risdiction of defendant's person established in a divorce action does t continue into a contempt proceeding, which is a separate action.

Service of process on Appellant in November, 1961, gave e Superior Court a jurisdiction of his person which continues to e present time -- but for the divorce action proper, and not for the ntempt proceedings arising therefrom. It is well established that "Contempt proceedings are separate and distinct and no part of the original case out of which they arise."

Bank of America v. Carr (1956) 138 Cal. App. 2nd 727

ing separate, a contempt proceeding must be initiated by service f process; a notice of motion is not sufficient.

Lund v. Sup. Ct. (1964) 61 Cal. 2nd 698

ontempt proceedings being criminal in nature,

Uhler v. Sup. Ct. (1953) 117 Cal. App. 2nd 147

etain minimal procedural safeguards are observed (though trial by ur is denied), no inferences may be made against the defendant, n the affidavit constituting the complaint must allege with particu- arity the necessary elements of a contempt, or the process is void.

Warner v. Sup. Ct. (1954) 126 Cal. App. 2nd 821

Ny, In re (1962) 201 Cal. App. 2nd 728

Section 1211, Code of Civil Procedure

he Order to Show Cause served on Appellant July 15, 1964, was void ecause the supporting affidavit was defective, and gave the court no urisdiction of Appellant's person for the contempt proceeding, despite ontinuing jurisdiction in personam for the divorce action proper.

urisdiction in personam for the contempt proceeding is wholly unre-
ated to jurisdiction in rem for quasi-in-rem eviction, and has not
een affirmed by any appellate court in Arnold v. Arnold.

he only jurisdictional question raised and decided in Arnold v. Arn-
ld and Arnold v. Bostick (Appellee's Brief, Appendices A and B) is
at of Superior Court jurisdiction in rem to issue a quasi-in-rem
iction order removing Appellant from his debtor's estate in defiance
the paramount and exclusive jurisdiction in rem conferred by Con-
ess upon the U.S. District Court as a court of bankruptcy. There
s no question of State-Federal conflict of jurisdiction in personam,
ich may be exercised concurrently by both courts in the divorce
tion and the Arrangement proceeding. The District Court of Appeal
cision, adopted by this Court, decided (erroneously, and without an
ca of support in law or prior court decisions) that the Superior
urt took and held an indivestible jurisdiction in rem over comm-
ity property; jurisdiction in personam was not mentioned.

Appellee's Brief presumes that there is but a single juris-
ition involved, which continues from divorce action to contempt pro-
ding (pp. 4-9), when in fact there are 5 separate jurisdictions:

(1) Jurisdiction in personam for the divorce action
(2) Jurisdiction in personam for the contempt proceeding
(3) Jurisdiction in rem over the community property
(4) Jurisdiction of the subject-matter of divorce
(5) Jurisdiction of the subject-matter of contempt.

Jurisdiction in personam is secured by service of process,
jurisdiction in rem by seizure of property, and jurisdiction of the

ubject-matter by statutory enactment and constitutional authorization. bviously, no once-for-all-time determination can suffice to establish types of jurisdiction in 3 separate cases, each must be considered eparately, in the light of existing circumstances. An appellate court ecision of Feb. 14, 1964, in a divorce action could not predetermine at the trial court on July 15, 1964, would secure a jurisdiction of different type in a separate proceeding. Superior Court jurisdiction person and subject-matter in the divorce action is unchallenged; s jurisdiction in rem was affirmed on appeal; its jurisdiction of erson and subject-matter in the contempt proceeding is denied by Appellant and has had no consideration on appeal.

III

A Motion to Quash is proper at the start of a contempt proceeding, o test the court's jurisdiction of the defendant's person.

Apellee's Brief (pp. 8-9) contends that the quashing statute, Sec.416.1, Code of Civil Procedure, could not be used in the contempt proceedin for two reasons: (1) The contempt proceeding was not a new action, but a part of the divorce suit; (2) The issue of "jurisdiction" had been settled in the appeal of the eviction order, the Superior Court holding a continuing "jurisdiction" to enforce its orders, and an uninterrupted "jurisdiction over both parties". It is evident that these concepts conflict with settled California law: the contempt proceeding is separate, and a newly established personal jurisdiction is needed. Apellant had a legal right to invoke the quashing statute, although the jurisdictional insufficiency of the affidavit could be reached by demurrer in a general appearance. That the Order to Show Cause set a date certain for the hearing (Appellee's Brief, p. 11, line 23; p. 12,

ne 17) in no way obligated Appellant to make a general appearance that time and refrain from using the Motion to Quash.

It is not true that "Appellant seeks to resist valid orders" ppellee's Brief, p. 7, line 4) or "to obstruct the lawful process of e Superior Court" (p. 13, line 27) in utilizing the quashing statute. e seeks only a modicum of success in a desperate rear-guard tion of defense against a divorce court armed with void orders and isused contempt powers, determined to destroy his home and family r mercenary reasons entirely outside the law. Appellee's intent, as early demonstrated after the 1964 and 1965 illegal arrests of App-lant, was to hold the hearing as scheduled, quickly deny the motion quash, ignore the statutory 10- or 15-day continuance, and proceed mediately to the main contempt hearing.

Such denial of due process could not be challenged at the pellate level as suggested (Appellee's Brief, p. 6, line 4), and as is eoretically possible. An attorney found in contempt is given a stay permit carrying the case to the highest appellate level, if he so sires; a pro se litigant -- particularly a husband contesting a divorce ion -- is sentenced to jail "forthwith", and stay is denied. Stays re thus denied by Judge Bostick in 1963 (25-day term) and by Judge Guiness in 1964 (3-day term). Moreover, relief by habeas corpus s denied by Judge Sweigert, and by this Court in Arnold v. Bostick it appears likely that all remedies are unavailable in practice.

Likewise, the suggestion that modification of an order is a ful method of securing relief (p. 7, line 7) is unacceptable. Appell-ar's defense is that no money is owing under the order, even if he re able to pay. Had the divorce court been willing to do justice, it would have refrained from awarding a groundless divorce to his

entally ill wife, evicting him illegally from his home, giving her stody of four minor children, refusing to vacate a void Final Decree of divorce fraudulently obtained, and denying rights of creditors. nce the purpose of these contempt actions is not to enforce valid rders, but to end litigation and consummate the plundering of Applant's debtor's estate, it is evident that modification of orders is effective as a means of avoiding contempt proceedings.

IV

<u>fficiency of the affidavit on which an Order to Show Cause is based ould be determined early -- before issuance of the Order, or on otion to Quash -- not at the main contempt hearing.</u>

The suggestion that a judge's refusal to issue an Order to ow Cause would be "a serious breach of ethical conduct at the ry least" (Appellee's Brief, p. 13, line 5) must be rejected as the pposite of the truth. The Order is more than a Notice of Hearing; it is the means of initiating a criminal prosecution, and should not be issued casually or without searching judicial scrutiny of the affidavit, whose sufficiency is a jurisdictional prerequisite to the Order. Appellee did not act "in the manner which the law demanded of him" (p. 13, line 17), but based his Order on an affidavit which failed to charge a contempt. The Order was therefore void.

> " . . no warrant could legally be issued upon the complaint made against the appellant. . . She was charged with the commission of an act which did not constitute a crime, and therefore the (magistrate) never acquired any jurisdiction to proceed in the matter, and the judgment and commitment are void on their faces."
>
> DeCourcey v. Cox (1892) 94 Cal. 665

e affidavit must state facts showing the court's jurisdiction.

Neves v. Costa (1907) 5 Cal. App. 111

the complaint is insufficient, charging no offense, the order issued void, and the judge issuing it is liable for damages.

Kuhn v. McNeal (1931) 41 Ohio App. 485, 181 NE 153

Kaptur v. Kaptur (1934) 50 Ohio App. 91, 197 NE 496

Steele v. Rauchfuss (1916) 157 NY Supp. 103

judge is liable for damages resulting from a contempt proceeding he lacks jurisdiction in the main action from which it arose.

Manning v. Ketcham (1932) 58 Fed. 2nd 948 (CA, 6th)

Harkness v. Hyde (1918) 31 Idaho 784, 176 Pac. 885

Holz v. Rediske (1903) 116 Wis. 353, 92 NW 1105

Jones v. Grooms (1937) 56 Ohio App. 351, 10 NE 2nd 958

the case at bar, arising from a contempt proceeding within a ger contempt proceeding, the importance of the affidavit on which latter depends for its validity is evident. It would have been to pellee's advantage to encourage a prior hearing on the motion to ish instead of discouraging it and ordering a void interim commit-nt to jail for non-attendance at an illegal hearing.

V

pellee's act was not his erroneous believing he had jurisdiction, ut his void exercise of a jurisdiction he did not possess.

It cannot be maintained that Appellee's sole overt act "for hich erroneous act there is no civil liability" (Appellee's Brief, p. 11, n 5) was incorrectly believing he had jurisdiction to proceed when act he did not. Error in the exercise of an existing jurisdiction xcusable; error in assuming a non-existent jurisdiction is not.

"Respondent . .apparently claims that where the judge assumes jurisdiction or has determined to exercise it, there can be no liability, for the reason that his judgment is but erroneous. But the court cannot confer jurisdiction by merely assuming it; nor can its determination that it has jurisdiction confer it. Where the judge has in fact no jurisdiction to act, his order of arrest is void; and whether he has jurisdiction must be determined from the affidavit itself and not from what the judge thinks it authorizes him to do."

Fkumoto v. Marsh (1900) 130 Cal. 66

short, the only way to avoid liability is to have jurisdiction. The itinction between void and erroneous judgments is elucidated by the ureme Court of California, quoting an earlier decision:

"When the proof has a legal tendency to make out a proper case, in all its parts, for issuing the process, the process will be valid until it is set aside by a direct proceeding for that purpose. In one case (the reference here is to a case where there is a total defect of evidence as to any essential fact) the Court acts without authority; in the other it only errs in judgment upon a question properly before it for adjudication. In one case there is a defect of jurisdiction; in the other, there is only an error of judgment. Want of jurisdiction makes the act void; but a mistake concerning the just weight and importance of evidence only makes the act erroneous."

Dusy v. Helm (1881) 59 Cal. 188

sfficient affidavit for a valid Order to Show Cause must contain rohtive facts for each of the four necessary elements of a contempt. n facts are given for one element, the affidavit is insufficient,

d obviously so; no valid order can be based on it, and the judge o issues the necessarily void order is liable for damages caused. some facts are given for each necessary element of contempt, the lge may make a judicial determination of their adequacy; if he con- ıdes, erroneously, that the affidavit is sufficient, and issues the der, he does so with immunity from liability. As one leading case presses the rule,

"Where the judge is called upon by the facts before him to decide whether his authority extends over the matter, such an act is a judicial act, and such officer is not liable in a suit to the person affected by his decision, whether such decision be right or wrong But when no facts are present, or only such facts as have neither legal value nor color of legal value in the affair, then, in that event, for the magistrate to take jurisdiction is not, in any manner, the performance of a judicial act, but simply the commission of an unofficial wrong."

Grove v. Van Duyn (1882) 44 N.J.Law 654, 42 Am. Rep. 648

Decisive importance also attaches to the question whether the judge a jurisdiction in the particular case and went beyond his authority, r simply acted when that authority had not been legally invoked.

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. When there is clearly no jurisdiction over the subject-matter, any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known o the judge, no excuse is permissible."

Bradley v. Fisher (1871) 80 U.S. 335 at 351

Thi language appears in the opinion of this Court in the case of

ted in Appellee's Brief, p. 10, and Appellant's Opening Brief, p. 5.
plied to the case at bar, it means that Appellee knew, from the
sence of all facts concerning one necessary element of contempt
ppellant's ability to comply with the support order) his jurisdiction
the subject-matter of contempt had not been invoked, his Order to
ow Cause was void, he had no authority over the main contempt
tter and no jurisdiction of Appellant's person. He should have re-
ted the wife's affidavit as insufficient, refused to issue the Order
Show Cause, and, of course, proceeded no further in the matter.
ling of the Motion to Quash alerted him to the deficiency of the
fidavit; Appellant's argument --repeated three times-- at the hearing
ale known to Appellee that he was proceeding illegally in the clear
sence of all jurisdiction of subject-matter AND person. Imposition
hese circumstances of a harsh and unreasonable 3-day jail sent-
ne, and its execution 'forthwith' to prevent collateral attack, were
nexcusable misuses of judicial power which should be redressed.

VI

legal acts, specifically forbidden by statute, carry no immunity.

ppellee's refusal to honor the provisions of the quashing statute
nade his judgment of contempt against Appellant not only void for
ack of jurisdiction but also illegal, for the statute requires that
'. . the time of the moving party to plead to the complaint shall
e extended, and no default may be entered against him, . ."

Section 416.1, Code of Civil Procedure

te time to plead is extended, the hearing must be postponed
eyond the date originally set by the Order to Show Cause, and non-

pearance by the defendant on the original hearing date cannot be default and should not be punishable as a contempt of court.

"The term 'default' is defined as the failure to perform a duty or an obligation required by law or by contract."

Lindley v. Sale (1934) 140 Cal. App. 662

default was entered against Appellant, despite statutory prohibition, en he was adjudged in contempt for not attending the hearing orig-ally scheduled by the Order to Show Cause.

"Although a court may have jurisdiction over the parties and the subject-matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."

United States v. Walker (1883) 109 U.S. 258 at 266

Vthout jurisdiction, the judge's liability for unlawful acts is necess-:ly no less, despite contentions of judicial privilege.

"A quasi-judicial officer. . . acting outside scope of his jurisdic-tion and without authorization of law, cannot shelter himself from liability to private citizen under Civil Rights Act by plea that he was acting under color of office."

Lewis v. Brautigam (1955) 227 Fed. 2nd 124 (CA, 5th)

This Court has expressed agreement,

" This is not a case in which Henson can claim immunity from responsibility by reason of his office of magistrate. He never ac-quired jurisdiction of the person of the plaintiff or the authoriza-tion to hold him in jail. Instead of obeying the plain provisions of the law, he pursued a course wholly different in nature. When he does this, he steps over the boundary of his judicial authority, and is as much out of the protection of the law in respect to the

particular act, as if he held no office at all."

Von Arx v. Shafer (1917) 241 Fed. 649 (CA, 9th)

d the U.S. Supreme Court also favors redress of unlawful acts: "The acts of all its officers must be justified by some law, and if an official violates the law to the injury of an individual the courts generally have jurisdiction to grant relief. . to a party aggrieved by any action . . which is unauthorized by the statute under which he assumes to act. . . Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public. . . officer, whose action is unauthorized by any law and is in violation of the rights of the individual."

American School v. McAnnulty (1902) 187 U.S. 94 at 108

VII

nisterial acts of Appellee are also involved, and unlike erroneous dicial acts carry no immunity from liability for damages.

ppellee's Brief limits itself to consideration of allegedly erroneous idicial action' against Appellant (p. 13, line 22), ignoring ministerial cs for which there is no immunity (Reporter's Transcript, at p. 7 f Clerk's Transcript; Appellant's Opening Brief, pp. 3, 4). Appellee's cs of issuing the Order to Show Cause and rendering the judgment f contempt were judicial, and void; his acts of issuing the bench arrant and the commitment to jail were ministerial, and wrongful ecause they violated the plain injunction of the quashing statute. It a not the Order to Show Cause or even the judgment of contempt ha injured and damaged Appellant, and not the bench warrant: it a the commitment to jail, an unauthorized ministerial act for which o judicial immunity can be claimed, even by a judge.

"A 'ministerial officer' is distinguished from a 'judicial officer' as respects liability in a civil action for acts done in an official capacity, in that a 'ministerial officer' has a line of conduct marked out for him and must follow it and may be held liable for any failure to do so which results in an injury to another, while a 'judicial officer' has powers confided to him to be exercised according to his discretion and does not act in his official capaci at his peril."

Davis v. Burris (1938) 51 Ariz. 220, 75 Pac. 2nd 689

"In absence of statutory authority, governmental officer acts at his peril and is personally liable for wrongs. . . Unless justified by some constitutional statute, a governmental officer or employee acts at his peril and personally pays for his wrongs -- a salutary principle necessary to discourage abuse of power, that official power which the great Marshall declared would be abused wherever authority was reposed."

Scheer v. Moody (1931) 48 Fed. 2nd 327 at 330 (DC, Mont.)

Ministerial acts do not require the exercise of judicial discretion, but nevertheless call for careful attention to their legality and correctness.

"A ministerial act may, perhaps, be defined to be one which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of, his own judgment upon the propriety of the act being done. . . And the act is none the less ministeri because the person performing it may have to satisfy himself that the state of facts exists under which it is his right and duty to perform the act. . . ."

Flournoy v. Jeffersonville (1861) 17. Ind. 169, 79 Am.Dec. 468

e ministerial officer is obligated to determine whether the act to performed is legal and proper; if it is not, he is liable.

"In the trial and decision of the issue whether or not Brown was guilty . . and the imposition of the sentence rendered, the justice exercised his judicial powers. That judgment was within his jurisdiction and lawful. When he had rendered it, the exercise of those powers in that case ceased. . . His issue of the commitment which he signed was a mere clerical or ministerial act. In its issue he exercised none of the powers of a judge. . . no statute . .gave this justice any authority to issue this commitment. . . . the justice. . could not escape liability for the damages which the plaintiff has suffered from his unlawful act."

Weigel v. Brown (1912) 194 Fed. 652 (CA, 8th)

". . when . . a final judgment has been rendered, there can remain no further judicial duty to be performed. The court or magistrate has then no longer a question upon which to deliberate. . Nothing is left to be done but to carry the judgment into effect. That, under our law, is accomplished by means of an execution. . . the issuing of such an execution . .was merely a ministerial act, and in a particular instance, where such process was issued erroneously, the magistrate was held responsible in damages for the commitment to prison of a party under it. . knowing at the time that the statute absolutely prohibited the imprisonment. . ."

Sullivan v. Jones (1854) 2 Gray (68 Mass.) 570

Wyatt v. Baker (1930) 41 Ga.App. 750, 154 SE 816

pellee's issuance of a commitment after filing of the Motion to ush had suspended his right to do so finds an analogy in

Banistes v. Wakeman (1891) 64 Vt. 203, 23 Atl. 585, 15 LRA 201

re a mittimus issued after an appeal was taken, interrupting the sdiction of the trial court.

VIII

ents subsequent to filing of Complaint herein are relevant to re-
et by Appellant for leave to amend, if dismissal be affirmed.

the Opening Brief (p. 14, 15) Appellant outlined additional void acts Appellee ocurring subsequently to the Complaint and therefore not tained in the record on appeal. The purpose of this recital was supply a basis for his request for this Court's leave to amend Complaint, in the event dismissal were affirmed, and not to add raneous argument against dismissal. The purpose of such a request to consolidate two actions into one and thereby expedite justice,

Mitchell v. RKO-RI Corp. (1956) 148 F.Supp. 245 (DC, Mass.)

Griffin v. Locke (1961) 286 Fed. 2nd 514 (CA, 9th)

tr dismissal without leave to amend, the District Court cannot now at leave while the appeal is pending,

Ginsburg v. Stern (1957) 242 Fed. 2nd 379 (CA, 3rd)

Sidis v. F-R Publ. Co. (1943) 7 F.R. Serv. 15a24, Case 2 (DC, N.Y.)

ss the mandate of this Court expressly permits, amendment can t be made subsequent to affirmance of the dismissal.

DixiCola v. Coca Cola (1944) 146 Fed. 2nd 43 (CA, 4th)

Porter v. Block (1946) 156 Fed. 2nd 264 (CA, 4th)

Food Handlers v. Plus Poultry (1958) 23 F.R.D. 109 (DC, Ark.)

lthough Appellant believes dismissal erroneous and trusts that the strict Court decision will be reversed on appeal, he nevertheless quests that leave to amend be granted if the decision of this Court ould be adverse, in order to anticipate that contingency.

CONCLUSION

ar absence of all jurisdiction of the subject-matter resulted from ıfficiency of the affidavit on which Appellee based his Order to w Cause, which was therefore void (not erroneous) and incapable securing jurisdiction of Appellant's person. Appellee, aware of the essity of showing ability to comply as an element of contempt, w that the jurisdiction of his court over the subject-matter had been invoked and was entirely absent. Appellee's bench warrant l judgment of contempt were likewise void, not erroneous. Appellee's ımitment of Appellant to jail was an illegal ministerial act which ries no judicial immunity. Such immunity being wholly lacking, ief can be granted under the Civil Rights Act. District Court nissal of the complaint was unjustified, and should be reversed.

ed: June 17, 1966.

Respectfully submitted,

J. Howard Arnold

Appellant, pro se

CERTIFICATE

certify that, in connection with the preparation of is brief, I have examined Rules 18 and 19 of the nted States Court of Appeals for the Ninth Circuit, and a, in my opinion, the foregoing brief is in full ompliance with those rules.

J. Howard Arnold

Appellant, pro se